



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Steven P. Zurcher, President
St. George Glass & Window
850 South Stephenson
Iron Mountain, Michigan 49801

JUN 21 2011

And by email to spzurcher@stgeorgeglass.com

RE: MUR 6421
Steven P. Zurcher
St. George Glass & Window

Dear Mr. Zurcher:

On November 4, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

Upon further review of the ~~allegations~~ contained in the ~~complaint~~ and information supplied by you, the Commission, on June 14, 2011, found that there is reason to believe that St. George Glass & Window made a prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b, and that you consented to the prohibited corporate contribution in violation of 2 U.S.C. § 441b. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondents.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or epaoli@fec.gov.

On behalf of the Commission,



Cynthia L. Bauerly
Chair

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Steven P. Zurcher
St. George Glass and Window Co., Inc. MUR: 6421

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by the Michigan Democratic State Central Committee. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

In 2010, federal candidate Dan Benishek sought Michigan's 1st District House seat, filing his Statement of Candidacy on February 12, 2010. The First District constitutes Michigan's Upper Peninsula and a portion of Northern Michigan. Benishek for Congress and Joseph A. Shubat, in his official capacity as treasurer ("Committee"), also filed its Statement of Organization on February 12, 2010.

The complaint bases its allegations on an October 2010 newspaper article (attached to the complaint) noting that Benishek for Congress posted a photograph of an airplane on a runway on the Benishek for Congress Facebook page, with the caption, "Headed out to the Home Show in Munising. See ya there!" See Complaint at 3; see also Facebook Page. According to the article, St. George Glass and Window in Iron Mountain, Michigan, owns the airplane. Brandon Hubbard, *Petoskey News-Review*, "Stupak-seat race: Dems accuse Benishek of unclaimed plane rides; GOP says Dems backing Wilson as spoiler," October 26, 2010. Steven Zurcher, the company's owner, did not respond to a reporter's request for comment. *Id.*

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1 The Committee reportedly acknowledged that since March 2010, Benishek had taken two
2 flights that "although arguably personal in nature, may need to be reimbursed at a commercial
3 charter rate."¹ *Id.*; complaint at 2. The complaint, thus, alleges that Benishek "has repeatedly
4 violated" the Commission's non-commercial aircraft travel prohibition.

5 The Commission has information that on two occasions, Benishek flew with Zurcher, his
6 longtime friend, in a private two-passenger plane to Political Party events. The Committee's
7 2010 Post-General disclosure report, filed December 2, reveals a \$2,250 disbursement on
8 October 21 to Zurcher for "Travel."

9 Zurcher and St. George Glass and Window responded to the complaint by stating that
10 Zurcher has no knowledge or record of "campaign flights" with Benishek. *See* Zurcher
11 Response at 1. Zurcher also stated that the Commission has no "jurisdiction restricting personal
12 travel," he has never flown to Munising, and the Munising airport was closed when the Munising
13 Home Show took place on April 10, 2010. *Id.*

14 The Benishek campaign posted videos on its campaign website and on YouTube
15 including speeches and direct "talks" by Benishek about his campaign travels. *See*
16 www.benishekforcongress.com/media; Benishek2010's YouTube Channel, *available at*
17 <http://www.youtube.com/user/Benishek2010>; and Benishek4congress YouTube Channel
18 (accessible directly from the Committee's Facebook page). One video, dated April 11, 2010, and
19 entitled, "Dr. Dan Benishek talks about his day after attending the Munising Home Show,"
20 *available at* <http://goo.gl/DukKK>, includes the following caption: "On April 10, 2010,
21 congressional candidate Dr. Dan Benishek attended Tea Party Express events in Cheboygan and

¹ Because House candidates are prohibited from using non-commercial aircraft travel when flying as "campaign travelers," *see* pp. 3-4, reimbursement would not be allowed.

1 Petoskey, MI. After those busy events, Dan was flown out to Munising, MI to make an
2 appearance at the Munising Home Show. After the event, Dan tells us about the busy day ..."
3 (emphasis added). In the video, Benishek talks about his weekend, which included going to Tea
4 Party events, and then states:

5 and then we came back up to Munising to do the home show. So
6 we got to shake a lot of people's hands and to see a lot of the
7 constituents, and meet a lot of people and tell them where I
8 stand on the issues. ... We've certainly had a busy weekend.
9 We've put over 1,500 miles on the car, and a little flying as well.
10 And so we appreciate your continued support and we'll see you
11 next time on the trail.

12
13 (emphasis added).

14 Other videos from the campaign website and Benishek2010's (YouTube) Channel show
15 Benishek making campaign speeches at "Tea Party Express" events. See April 9, 2010, video
16 entitled "Dr. Dan Benishek speaks on the Tea Party Express about his 2010 campaign," available
17 at <http://goo.gl/oSPps>, and April 17, 2010, video entitled "Dr. Dan Benishek at the Houghton
18 Tea Party," available at <http://goo.gl/ohDpO>. See also Dionna Harris, "Tea Party rolls into
19 Esky," Daily Press, April 10, 2010 ("Also speaking out Friday was Congressional candidate Dan
20 Benishek, who agreed with what was being said.").

21 **B. Legal Analysis**

22 The Honest Leadership and Open Government Act of 2007 ("HLOGA"), which became
23 effective on Sept. 14, 2007, changed the Federal Election Campaign Act of 1971, as amended
24 ("the Act"), by prohibiting House candidates from making expenditures for non-commercial
25 aircraft travel. 2 U.S.C. § 439a(c)(2). The Commission promulgated implementing regulations
26 that became effective Jan. 6, 2010. See Explanation and Justification, 74 Fed. Reg. 63951
27 (Dec. 7, 2009). The regulations provide that House candidates are prohibited from non-

1 commercial air travel on behalf of any such candidate or any authorized committee of such
2 candidate, 11 C.F.R. § 100.93(c)(2), and from accepting in-kind contributions in the form of non-
3 commercial air travel. 11 C.F.R. § 113.5(b).²

4 The prohibition applies to a House candidate who is a "campaign traveler," which
5 includes, "any candidate traveling in connection with an election for Federal office or any
6 individual traveling in connection with an election for Federal office on behalf of a candidate or
7 political committee." 11 C.F.R. § 100.93(a)(3)(i)(A).

8 Further, the Act prohibits corporations from making any contribution in connection with
9 a federal election. 2 U.S.C. § 441b. "Contribution" includes any gift, subscription, loan,
10 advance, or deposit of money or anything of value made by any person for the purpose of
11 influencing any election for federal office. 2 U.S.C. § 431(8). In addition, the Act and
12 regulations prohibit officers from consenting to the making of a contribution by the corporation.
13 2 U.S.C. § 441b and 11 C.F.R. § 114.2(e).

14 The available information suggests that Benishek took a prohibited non-commercial
15 flight to campaign at the Munising Home Show. On April 10, 2010, the day of the Munising
16 Home Show, the Committee posted on its Facebook page a photograph of a small airplane on a
17 runway, with the caption, "Headed out to the Home Show in Munising. See ya there!" Such a
18 photograph and description indicate that Benishek used air transportation to attend the event.

19 Further, a Benishek2010's YouTube Channel video includes a caption noting that the
20 candidate flew to Munising "to make an appearance at the Munising Home Show." See April 11,
21 2010, video entitled "Dr. Dan Benishek talks about his day after attending the Munising Home

² There are two exceptions to the ban on non-commercial aircraft travel for House candidates that are not relevant here: travel on government-operated aircraft and aircraft owned by the candidate or members of the candidate's immediate family. See 11 C.F.R. §§ 100.93(e) and (g), 113.5(c).

1 Show," *available at* <http://goo.gl/DukKK>. In the accompanying video, Benishek states he went
2 to Munising "to do the Home Show." *Id.* He then recounts that he met a lot of people, shook a
3 lot of hands, saw a lot of constituents, and told them "where I stand on the issues." *Id., see also*
4 www.benishekforcongress.com/media. These activities appear to constitute campaigning. He
5 also acknowledged in the same video that he did "a little flying." Thus, Benishek meets the
6 definition of a campaign traveler because he flew to the Munising Home Show in connection
7 with his election for federal office.

8 It appears that St. George Glass and Window, a Michigan corporation, provided the plane
9 that transported Benishek to the Munising Home Show. As noted above, the complaint includes
10 an article reporting that the plane pictured on the Benishek Facebook page is registered to and
11 owned by St. George Glass and Window. Zurcher, the owner and president of the corporation,
12 denies flying Benishek to Munising, stating that the airport was closed at the time. Zurcher's
13 denial, however, does not foreclose the possibility that he flew Benishek to somewhere close to
14 Munising. In fact, although the Munising airport, Hanley Field Airport, appears to close for the
15 winter, from November through May, there is another airport 45 minutes away in Marquette,
16 Michigan, that is open year-round. *See* <http://goo.gl/xJNsp>.

17 Additionally, the available information indicates that Benishek campaigned at "party-
18 related events." The aforementioned April 9 and 17, 2010, videos of Benishek at Tea Party
19 Express events in Escanaba and Houghton, respectively, show him giving campaign speeches
20 (Escanaba – "I'm Dan Benishek, a general surgeon, and I'm running for Congress because
21 enough is enough!"); (Houghton – "Hi. I'm Dan Benishek, and I'm running for Congress."). In
22 an article attached to the complaint, the Benishek Committee acknowledges that Benishek took

1 two flights on "Zurcher's"³ plane to "party-related events" but did not identify the events in
2 question or disclose any further information. Zurcher denies flying him on any "campaign
3 flight" but does not elaborate.

4 The available information indicates that St. George Glass and Window made a prohibited
5 corporate in-kind contribution by permitting House candidate Benishek to fly to the Munising
6 area in the corporation's airplane so that he could make an appearance at the Munising Home
7 Show. It further appears that Zurcher, the corporation's owner and president, consented to the
8 corporation's contribution, as he piloted the plane, and thereby, violated the Act. Therefore, the
9 Commission has determined to find reason to believe that St. George Window and Glass Co.,
10 Inc., violated 2 U.S.C. § 441b by making a prohibited corporate in-kind contribution in the form
11 of non-commercial aircraft travel, and that Steven P. Zurcher violated 2 U.S.C. § 441b by
12 consenting to St. George Window and Glass Co., Inc. making the prohibited contribution.

³ As noted above, there is information that the plane is registered to St. George Glass and Window, not Zurcher.

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